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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/619,932	07/15/2003	Rebecca L. Engel	P0011481.00	6826
27581	7590	08/29/2007		
MEDTRONIC, INC. 710 MEDTRONIC PARKWAY NE MINNEAPOLIS, MN 55432-9924			EXAMINER THANH, LOAN H	
			ART UNIT 3763	PAPER NUMBER
			MAIL DATE 08/29/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/619,932

Applicant(s)

ENGEL ET AL.

Examiner

LoAn H. Thanh

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3,6-8,10,12 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3,6-8,10,12 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/07/07 has been entered.

Applicant is further reminded of his election of invention I and species directed at figs. 3-7. See paper 05/27/05.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,6-8,10,12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ginsburg (US 5,180,364).

Ginsburg discloses a cannula comprising a body having a proximal and distal end, a lumen therethrough, and a plurality of valveless apertures in the wall of the cannula to allow fluid flow through the lumen. See figures 1a, 1b and 10. Ginsburg disclosed the apertures/passageways 12, 212 maybe any type of opening, such as

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holes, slits vents and the like which afford communication between the central lumen 16 and a region exterior to the cannula/catheter 10. However, Ginsburg does not explicitly show these openings to have a major and minor axis, which is perpendicular to the longitudinal axis of the cannula/catheter 10 in figures 1a or 10. Ginsburg shows a different embodiment figure 1B, which has a plurality of holes of any shape size and position along the distal end 22 of the catheter body 214. The passageways are also disclosed as randomization in configuration as well as location. Specifically, Ginsburg shows an aperture which is eye-shaped, or a shape having two corners having a major axis which is perpendicular to the longitudinal axis of the catheter or cannula. Ginsburg discloses it is well within the scope of one of ordinary skill to modify invention with the alternatives to the size shape and location. See column (col.) 5, lines 14-34, col. 6, lines 52-55, and col. 7, lines 55-64. Thus, it would have been obvious to one of ordinary skill in the art of catheter/cannula to provide oval apertures which are taught by Ginsburg in the uniform configuration (evenly distributed) with a major axis that is perpendicular to the longitudinal axis of the catheter as mere alternatives of different types, size or shape of apertures. Further, with respect to claims 7 and 13, it would have been obvious to modify the rows to provide them in an offset position for the same reasons as above in order to provide a plurality of fluid flow to the target tissue for providing emergency perfusion of a desired vessel.

Response to Arguments

Applicant's arguments filed on 06/07/07 with respect to claims 1,3,6-8,10,12-13 have been considered but are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Examiner is maintaining that the plurality of rows would provide even /uniform distribution/flow.

It is the Examiner's position that the apertures of Ginsburg is valveless. It is the catheter of Ginsburg which has the valves 18.

In response to applicant's argument that Ginsburg et al. does not disclose a venous cannula, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Furthermore, the claims do not have enough structural language to overcome the reference.

Applicant further argues that the language of applicant (eye, eye shaped or corner or arcuate) does not appear in the Ginsburg reference. Applicant should be

aware that an inventor/attorney is his own lexicographer. It is within the figures and the disclosure/description of a reference that the Examiner is relying upon and not just mere "exact" words or phrases.


Applicant is directed to figure 1B for support of the shapes of the openings.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LoAn H. Thanh whose telephone number is (571) 272-4966. The examiner can normally be reached on Mon. - Fri. (First Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



LOAN H. THANH
PRIMARY EXAMINER